IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MELISSA RODRIGUEZ, et al.,	:	
Plaintiffs	:	
	:	
v.	:	Civil No. AMD 06-1676
	:	
STATE OF MARYLAND, et al.,	:	
Defendants	:	

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MEMORANDUM OPINION

Tragically on February 2, 2005, Philip Parker, Jr., an inmate of the State of Maryland, was brutally strangled to death while he was a passenger on a bus transporting three dozen inmates between correctional facilities. Plaintiffs Melissa Rodriguez and Peter Parker, Sr., Parker's parents, instituted this action against the State and numerous correctional officials and officers in the Circuit Court for Baltimore City asserting federal and state law damages claims. Defendants timely removed the case to this court. Extensive discovery has been completed and now before the court is Defendants' motion for summary judgment as to the federal claims. A hearing has been held and counsel have been heard at length. For the reasons stated within, the motion for summary judgment on the federal claims shall be granted and the case shall be remanded so that the state law claims may proceed.

I.

Distilled to their essence, as Plaintiffs agreed at the hearing, Plaintiffs assert two federal claims pursuant to 42 U.S.C. § 1983: (1) that Defendants violated the Eighth Amendment (as made applicable to the states by the Fourteenth Amendment) by acting with "deliberate indifference" in failing to protect Parker from the attack on the bus; and (2)

Defendants similarly violated the Eighth Amendment by acting with "deliberate indifference" to Parker's urgent need for medical care once correctional officers discovered that he had been assaulted.

Viewed in the light most favorable to Plaintiffs as the non-movants, the admissible record evidence marshaled by the parties reflects the following.

Sometime around 3:30 a.m. to 3:45 a.m. on February 2, 2005, inmate Kevin Johns (perhaps with the assistance of others) murdered fellow inmate Parker while they were passengers on a Maryland Division of Correction (DOC) bus traveling from Hagerstown to Baltimore. Parker and Johns, who knew each other from their time in prison and in a juvenile facility together, were formally assigned to a maximum security facility, the Maryland Correctional Adjustment Center, known as "Supermax," in Baltimore. However, in the one or two days before the murder, they had been housed at the Maryland Correctional Institution (MCIH) at Hagerstown, in Washington County, because on the day prior to the murder, Parker had testified on behalf of Johns, who was to be sentenced in the Circuit Court for Washington County for a murder he had committed while incarcerated.

Upon completion of the court proceeding, Johns, Parker, and two other Supermax inmates were brought back to MCIH to await transportation back to Supermax. Sometime after midnight, after picking up a total of 36 inmates from three Hagerstown-area prison facilities, the prison bus headed for Baltimore. The bus contains three main compartments for inmates, each separated by grillwork and a locked door. There are also two segregation or protective custody cages near the front of the bus, each of which can hold two inmates.

Five officers traveled with the inmates; all are Defendants here. Sergeant Larry

Cooper, the officer in charge, and Officer Robert Scott sat in a two-person cage at the rear of the bus, separated from the inmates by a plexiglass shield and grillwork. There is no physical access to the interior, inmate section of the bus from the rear compartment. Officer Charles Gaither was the driver. Officers Earl Generette and Kenyatta Surgeon were stationed in the front of the bus.

Prior to boarding the bus, all of the inmates, including Johns, were searched and then placed in three-point restraints. The four Supermax inmates got on the bus and sat together in the rear. Parker sat directly in front of Johns. During the trip back to Baltimore the interior bus lights were turned off. As the bus neared the Baltimore City/Baltimore County line on Interstate 70, Officer Scott called on the interior telephone from the back of the bus and reported that an inmate, later identified as Johns, had just moved from his seat to the seat next to Parker. Subsequently, Officer Scott and Sergeant Cooper used their flashlights to observe the inmates and Officer Scott requested that the interior lights of the bus be turned on; the bus was then illuminated by the interior lighting.

Officer Generette's description of the situation is typical of that provided by all of the officers:

> Correctional Officer Scott said that he did not know whether the inmate was playing or not but he had switched seats. Correctional Officer Scott also said that he thought something had happened and he asked if I could see anything. I saw that [Sergeant] Cooper was using a flashlight to observe the inmates. I asked Correctional Officer Gaither to turn on the interior lights and the lights were turned on. From my vantage point I could see only the inmates' heads in the rear inmate compartment. I saw nothing unusual or out of the ordinary. I saw inmate Johns, who looked calm and relaxed, with his head laid back on the seat looking at the ceiling, he was not doing anything. I told Officer Scott that I didn't see anything, that the inmate was just sitting there. During that trip I heard no screaming, no commotion, and the inmates did not indicate in

any way that there was a problem.

(Decl. of Earl Generette at ¶ 7.)

The subsequent investigation of Parker's death disclosed that Johns, before switching seats (i.e., while sitting directly behind Parker) had managed to loosen his restraints sufficiently to be able to place Parker in a chokehold, thereby strangling him to death from behind. (Johns also had access to a razor blade and used it to cut Parker in the neck.) Johns then changed location and sat next to Parker. Although Parker at this point was slouched down on his seat, Officer Scott, whose suspicions were aroused by the movement of Johns and another inmate, did not suspect anything was "amiss" as he thought Parker was sleeping, and observed Johns leaning back in the seat. (Dep. of Robert Scott at 97; Decl. of Robert Scott at 1; Internal Investigative Unit Interview of Robert Scott at 17-20.) Sergeant Cooper also saw "nothing unusual." (Decl. of Larry Cooper at ¶¶ 5-6.) The lights were then turned off.

Plaintiffs repeatedly point out that the murder occurred a mere five to seven feet from where Officer Scott and Sergeant Cooper were seated in the rear officer compartment of the bus, and that they must have observed suspicious activity. (In fact, the officers on the bus are alleged to have been eating, listening to music and/or watching videotapes, and otherwise were inattentive to a significant degree. All of them were disciplined: two with termination and one with a forced retirement). Plaintiffs argue that "[t]his event was seen and overheard by numerous inmates on the bus who had no trouble determining that one inmate was attempting to murder another. The events occurred over an extended period of time and on at least one occasion, if not more, when inmate Johns released the pressure on Philip Parker,

Parker made loud noises that could be heard at the front of the bus and was revived sufficiently to begin kicking, struggling, and gasping for breath." However, there is no admissible evidence in the record to support these assertions.

Although Officer Scott affirms that he was unaware that any inmate was under attack or otherwise in need of assistance, he was concerned that the inmates might be "planning to do something." (Decl. of Robert Scott at 2.) Thus, he contacted the officers at the front of the bus and told them that he wanted them to come to the back of the bus as a team when they arrived at the Supermax sally port. Upon the arrival of the bus at Supermax, the officers placed their weapons in the weapon box, and Officer Gaither, who was the only officer who had the keys, unlocked the doors to the inmate compartments. Officer Gaither called to the Supermax inmates one at a time, to be individually escorted off the bus. When Johns was called, he stood up and the officers could see blood on his shirt. Blood was also found in Johns's seat. At that point, Officer Scott told Officer Gaither to hold Johns, stating that he thought Johns "might have cut [Parker] down here." (Internal Investigative Unit Interview of Robert Scott at 15.) Inmate Parker was "slumped" down between the seats. (*Id.*)

Officer Scott shook Parker and received no response. He then lifted Parker's head, which had been down, and observed marks on his neck and eye and blood by his nose. Parker was promptly moved to the front of the bus where Officer Gaither performed CPR. Parker did not respond. Sergeant Cooper advised the staff of Supermax to contact medical services or call 911 because an inmate on the bus was injured. Sergeant Cooper returned to the bus and told Officer Surgeon to take Johns into the Supermax facility. After several minutes, Parker was taken into Supermax where Baltimore City Fire and Rescue and EMS

personnel unsuccessfully tried to revive him. Parker was transported to the hospital where he was pronounced dead.

II.

Summary judgment is proper where the moving party demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A dispute is "genuine . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* A mere "scintilla of evidence" is not enough to frustrate a motion for summary judgment. Instead, the summary judgment record must demonstrate the existence of admissible evidence on which the finder of fact could reasonably find for the party opposing judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Celotex*, 477 U.S. at 322-23.

III.

A.

Plaintiffs assert as their principal federal claim that Defendants violated Parker's constitutional right to be free from assault (here, an assault which resulted in death) by other inmates, a component of the protection afforded by the cruel and unusual punishment prohibition in the Eighth Amendment. In *Rich v. Bruce*, 129 F.3d 336 (4th Cir. 1997), the Fourth Circuit articulated the applicable standard for such a claim. In *Rich*, I found after a non-jury trial that Bruce, an officer at Supermax, had exhibited deliberate indifference to a substantial risk of serious harm to Rich, a Supermax inmate, because of Bruce's role in allowing Higgins, a fellow inmate of Rich's, to attack and seriously injure Rich. *Id.* at 336-

37.

In reversing the judgment in favor of the inmate, the *Rich* Court cited and elaborated upon the Supreme Court's then-recent decision in *Farmer v. Brennan*, 511 U.S. 825 (1994):

> a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; *the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.*

Id. at 338 (emphasis in original). Emphasizing this subjective standard, the Court stated that "[w]hile [*Farmer*] made clear that '[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . .' it made it equally clear that inferences from circumstantial evidence cannot be conclusive." *Id*. Concluding that the facts I found from the evidence at trial did not support a finding of "deliberate indifference," the Court reasoned that although I found that "Bruce had actual knowledge of facts from which a reasonable person might have drawn the inference that Bruce's actions exposed Rich to a substantial risk of serious harm," my other subsidiary findings "affirmatively establish[ed] that Bruce did not draw" the necessary inference critical to an Eighth Amendment violation. *Id.* In particular, none of my findings established "that Bruce had actual knowledge that his actions uniquely increased [the] general risks to which Rich was exposed each and every day he was incarcerated in disciplinary segregation at Supermax." *Id*. at 339.

Here, Plaintiffs assert that a reasonable juror could find that one or more of Defendants acted with deliberate indifference to the risk posed by Johns to Parker because

"the transport of Parker on February 1-2, 2005 went well beyond the normal risks that every transport conducted by [Defendants] constituted to the life and liberty of each inmate on the bus." Plaintiffs urge the following in support of their assertion:

> Transport bus 2809 on the night of February 1-2, 2005 had increased the normal risks in numerous ways, among them; [1] not properly strip searching inmates to prevent the introduction of razor blades onto the bus; [2] not properly shackling not only Kevin Johns, but numerous other inmates on the bus; [3] allowing Kevin Johns to be transported at all, or not placed in a segregated caged cell area of the bus based on his administrative segregation at Supermax; [4] allowing Kevin Johns to threaten the life of Darnell Dickerson before the transport vehicle ever left MCIH and not removing Johns from the vehicle for disciplinary action; [5] allowing officers to carry contraband like cell phones and DVD players onto the transport vehicle; [6] failing to assure that the transport officers were equipped with the mandatory required a microshield for performing CPR; [7] failing to observe and when observed, failing to take any corrective action in regard to having inmates stand (a violation of correctional policies and a disciplinary offense), and move from one seat to another (also a disciplinary violation); [8] failing to constantly observe Supermax Level II inmates as knowingly required by the transport officers; [9] failing to take any action when the inmate seated next to Philip Parker started standing and moving his seat; [10] failing to take any action when inmate Johns got up and moved into the seat next to Philip Parker; [11] failing to do anything whatsoever when 6'4" Philip Parker disappeared and could no longer be seen in the seat next to inmate Johns or anywhere on the bus; [12] failing to do anything when blood was seen, or should have been seen, on the seat where Philip Parker had been seated; [13] engaged in conversations between themselves as to how to best protect themselves before entering the rear section of bus 2809 after reaching Supermax; [14] failing to promptly discover Philip Parker following the vicious attack upon him; [15] failing to promptly extricate Philip Parker from his position wedged into his former seat; [16] failing to provide prompt CPR and other medical assistance to Philip Parker; [17] failing to continue beyond the few seconds of CPR started by defendant Gaither; and [18] failing once having removed Philip Parker from the transport vehicle to an area with sufficient space to allow the administration of CPR and other life saving procedures to take place.

But none of this litany, even assuming there was admissible evidence to support all of them (which there is not) provides proof that any one of the officers on the bus at any time

"had actual knowledge that his [or her] actions uniquely increased [the] general risks to which [Parker] was exposed" as an inmate passenger on a Division of Corrections transport vehicle. Thus, as a matter of law, Plaintiffs lack sufficient evidence to establish by a preponderance of the proof that Defendants violated the Eighth Amendment. *See id.* at 340.[*]

B.

Plaintiffs also assert a claim that Defendants were deliberately indifferent to Parker's urgent need for medical attention after they discovered him injured in the rear of the bus upon arrival at Supermax. In this context, the Fourth Circuit has said:

> Deliberate indifference is a very high standard-a showing of mere negligence will not meet it. Deliberate indifference requires a showing that the defendants actually knew of and disregarded a substantial risk of serious injury to the detainee or that they actually knew of and ignored a detainee's serious need for medical care.

Young v. City of Mount Ranier, 238 F.3d 567, 575-76 (4th Cir.2001) (internal quotations and citations omitted); *see White v. Chambliss*, 112 F.3d 731, 737 (4th Cir.1997) ("A claim of

[*]Several critical, undisputed issues are apparent. First, officers on the bus did not have any particular knowledge about any conflict between Parker and Johns prior to the events on February 2, 2005. (*See* Decl. of Earl Generette at ¶ 3; Decl. of Kenyatta Surgeon at ¶ 3; Dep. of Charles Gaither at 276 (only knew Johns but not the other three Supermax inmates; did not know Johns had killed his uncle); Dep. of Robert Scott at 97 (did not know Johns or Parker).) Indeed, Officer Generette testified that the Supermax inmates appeared to be friendly to one another.

Second, the officers affirm that they were not in position to witness, and did not witness, Johns's assault of Parker. Officers Generette and Surgeon were at the front of the bus, two compartments away from the rear-most inmate compartment where Parker and Johns were sitting. Officers Cooper and Scott sat behind "plexiglass clad with grillwork."

Third, the officers on the bus did not observe any evidence suggesting Parker was being harmed. To the contrary, even though Parker was slouched in his seat, Officer Scott thought Parker was sleeping and Sergeant Cooper stated that he did not witness anything unusual. (Dep. of Robert Scott at 97; Decl. of Larry Cooper at ¶¶ 5-6.)

deliberate indifference . . . implies at a minimum that defendants were plainly placed on notice of a danger and chose to ignore the danger notwithstanding the notice.").

Here, once Defendants realized that Parker had been injured, they took several steps in attending to him. For example, Officer Gaither, upon discovering Parker in an unconscious state, administered CPR on the bus. Also, Sergeant Cooper immediately prompted the Supermax staff to contact medical services or call 911 because Parker was injured. Plaintiffs' claims that Defendants "fail[ed] to continue beyond the few seconds of CPR started by defendant Gaither; and fail[ed] once having removed Philip Parker from the transport vehicle to an area with sufficient space to allow the administration of CPR and other life saving procedures to take place," sound in negligence, not the "subjective recklessness" which is the standard under the Eighth Amendment. *See Rich*, 129 F.3d at 340, n.2.

IV.

For the reasons set forth, Defendants' Motion to Dismiss, or in the Alternative for Summary Judgment has been granted in part and denied in part by separate order. The state law claims were remanded. *See Waybright v. Frederick County, MD*, 528 F.3rd 199 (4th Cir. 2008).

Date: July 31, 2008

/s/
Andre M. Davis
United States District Judge